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10/773,757	02/06/2004	A. Carleton Elliott	10006-005A	4027
51476 7590 02/23/2009 JERRY TURNER SEWELL P.O. BOX 10999 NEWPORT BEACH, CA 92658-5015				
EXAMINER NGUYEN, CHI Q				
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/773,757
Filing Date: February 06, 2004
Appellant(s): ELLIOTT ET AL.

A. Carleton Elliott et al.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/31/2008 appealing from the Office action mailed 10/8/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2 and 8 stand rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 6,015,139 to Weber.

Claim 1: Weber disclose an anchor device 2 for capable of using in a shear wall that positioned on a structural support, the compression post comprising: a plate 10 having a first surface mountable to bottom surface of an end post of a shear wall, the first surface of the plate having dimensions selected to conform to the bottom surface of the end post, the plate having a second surface, generally parallel to the first surface; and an extended portion 12 positioned generally perpendicular to the second surface of the plate 10, the extended portion having at least one dimension selected to fit through a hole in a mudsill of the shear wall, the extended portion having an exposed end displaced from the second surface of the plate by a length selected to conform to a thickness of the mudsill such that when the compression post is mounted to the end post of the shear wall and the shear wall is mounted on a structural support, the exposed end of the extended portion rests on the structural support and forces applied to the compression post by the end post are communicated via the plate and the extended portion to the structural support (see Figs. 1-3).

Claim 2:

Wherein the extended portion is secured to the plate.

Claim 8:

Wherein the extended portion is cylindrical and the at least one dimension is an outside diameter.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 6,015,139 to Weber.

Weber discloses the basic structures as stated but does not expressly disclose wherein the extended portion is secured to the plate by at least one weld. However, this feature would have been a matter of obvious design choice to one of ordinary skill in the art at the time the invention was made to secure the plate and the extension portion together by weld as a well-known method in the art that how to connect two members.

Furthermore, applicant has not disclosed the criticality of this feature.

(10) Response to Argument

Appellant argues: the prior art US Patent No. 6,015,139 to Weber does not disclose or suggest a compression post, an anchor device capable of being used in a shear wall positioned on a structural support; Weber does not disclose a compression post comprising a plate having a first surface mountable to a bottom surface of an end post

of a shear wall; Weber does not disclose a first surface having dimensions selected to conform to the bottom surface of an end post; Weber does not disclose an extended portion having at least one dimension selected to fit through a hole in a mudsill of a shear wall; Weber does not disclose an extended portion having an exposed end displaced from the second surface by a length selected to conform to the thickness of the mudsill. The appellant's arguments have been fully considered by the examiner; however, they are not persuasive because the appellant argued limitations are not positive claimed (e.g. a shear wall, mudsill, or structural support). The claims are solely drawn to a subcombination of a "compression post "and a combination with such shear wall, mudsill and structural support are not being positively claimed. Therefore it has been held that a recitation with respect to the manner in which a claimed which a claimed apparatus is intended to be employed does not different the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex Parte Masham, 2 USPQ F.2d 1647 (1987)*.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

(12) Examiner's Answer's Conclusion

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/C. Q. N./

Examiner, Art Unit 3635

/Richard E. Chilcot, Jr./

Supervisory Patent Examiner, Art Unit 3635

Conferees:

Richard Chilcot, SPE

/R. E. C./

Supervisory Patent Examiner, Art Unit 3635

Brian Glessner, SPE

/BG/